IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8742 of 2000

with

SPECIAL CIVIL APPLICATION No 10816 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

AHMEDABAD MUNICIPAL CORPN

Versus

BABUBHAI S SOLANKI

Appearance:

1. Special Civil Application No. 8742 of 2000
   MR KIRIT I PATEL for Petitioner
   RULE SERVED for Respondent No. 1

2. Special Civil ApplicationNo 10816 of 2000
   MR PRABHAKAR UPADYAY for Petitioner
   MR KIRIT I PATEL for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 11/01/2001

ORAL JUDGEMENT

In both these petitions, the award passed by the Labour Court, Ahmedabad, in Reference (LCA) No. 277/94 dated 18.12.1999 has been challenged. Special Civil Application No. 8742/2000 has been filed by Ahmedabad Municipal Corporation, an employer, whereas Special Civil Application No.10816/2000 has been filed by Shri Babubhai Solanki, a workman upon whom punishment was imposed by Ahmedabad Municipal Corporation.

2. For the sake of convenience, parties to the litigation have been described as arrayed in Special Civil Application No. 8742/2000.

3. The respondent was working as a Senior Clerk under the petitioner. In the course of performance of his duties, the respondent had committed several irregularities and had committed several acts of misconduct and he was found to be disobedient and, therefore, a departmental inquiry had been initiated against him. Charge-sheet dated 22.6.1988 was served upon him. Upon perusal of the chargesheet, it appears that the respondent had shown gross negligence in the matter of payment of honorarium to certain doctors and had also tampered with record. He had not carried out instructions given to him by his higher authorities and had shown negligence in performance of his duties by not preparing roster register and by not completing service books of certain employees.

4. The charges which have been referred to hereinabove were proved in the departmental enquiry held against the respondent. During the period when the enquiry proceedings were pending against the respondent, the respondent was placed under suspension by an order dated 15.4.1988. As a result of the enquiry, the respondent was removed from service by an order dated 30.4.1990.

5. Being aggrieved by the order of removal dated 30.4.1990, the respondent had initiated proceedings under the provisions of the Industrial Disputes Act, 1947 and, ultimately, the matter was placed before the Labour Court, Ahmedabad. After considering the pleadings and

evidence, the Labour Court came to the conclusion that though most of the charges levelled against the respondent had been proved, the punishment which was inflicted upon the respondent was very harsh. The Labour Court was of the view that looking to the fact that the earlier service record of the respondent was good, the petitioner employer ought to have inflicted lesser punishment upon the respondent. The Labour Court was also of the view that warnings ought to have been given to the respondent. The Labour Court did not pass any order for reinstatement in view of the fact that in the calendar year 1999 the respondent had been superannuated but directed the petitioner to give 25% of backwages and quashed and set aside the order of removal.

6. Being aggrieved by the award referred to hereinabove, the employer as well as the workman have approached this court.

7. It has been submitted by learned advocate Shri K.I. Patel appearing for the petitioner employer that the Labour Court had committed an error by awarding backwages to the respondent. In view of the fact that the Labour Court had come to the conclusion that the charges levelled against the respondent had been proved in the departmental proceedings, the Labour Court should not have interfered with the order of punishment. According to him, as the respondent had not performed his duties, the respondent is not entitled to any amount by way of backwages and therefore the Labour Court ought not to have awarded 25% of backwages to the respondent.

8. On the other hand, learned advocate Shri Upadhyaya appearing for the respondent workman has submitted that as the Labour Court had come to a conclusion that the punishment inflicted upon the respondent was harsh, the Labour Court ought to have awarded 100% backwages. According to him, the respondent had performed his duties quite sincerely and scrupulously. During his service record of 20 years, prior to the charge-sheet which was given to the respondent, at no point of time the respondent was found negligent in performance of his duties. As the punishment which was inflicted upon the respondent in the departmental proceedings was very harsh, the Labour Court ought to have quashed the order of removal and should have awarded full backwages.

9. I have heard the learned advocates and have also gone through the relevant documents shown to the court by the learned advocates. It is not in dispute that the

charges referred to in the chargesheet, except Charges Nos. 5, 6, 7, 9, and to a certain extent charge No. 10, had been proved in the departmental proceedings. It is an admitted fact that the respondent had not performed his duties sincerely and scrupulously. He had committed serious errors and so as to see that the errors committed by him are not noticed by the higher authorities, he had tampered with the record. The respondent was found absolutely careless in maintenance of record and had shown such a carelessness that the doctors performing their duties as honorary doctors could not get their honorarium in time. Moreover, on account of negligent working of the respondent, service books of several employees had not been updated. Thus, it cannot be said that the respondent was not guilty of the charges proved against him in the departmental proceedings. At the same time, it is also true that the past service record of the respondent was reasonably good as the petitioner could not establish before the Labour Court that the respondent had committed mistakes or had acted in a negligent manner in the past. It is also not in dispute that either in the month of November or December 1999 upon completion of 58 years of age, the respondent had been superannuated. In the circumstances, it was not possible for the Labour Court to reinstate the respondent in service and, therefore, the Labour Court had awarded 25% of backwages. The order of removal passed by the petitioner had been quashed and set aside.

10. Upon having an overall view of the facts of the case, it would be just and proper to modify the award passed by the Labour Court by reducing the backwages which are awarded to the respondent. Though the order of removal has been set aside by the trial court, the trial court has not substituted the said punishment by any other kind of punishment and in the circumstances it would be just and proper to inflict punishment of stoppage of one increment with future effect. Only 10% of backwages shall be paid to the respondent instead of 25%. Needless to say that the respondent shall get continuity of service and shall get all retirement benefits as ordered by the Labour Court.

11. As a result, the petitions are disposed of. Rule is made absolute to the above extent with no order as to costs so far as Special Civil Application No. 8742 of 2000 is concerned and Special Civil Application No. 10816/2000 is rejected and rule is discharged.

(A.R. Dave, J.)

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